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No. 06-195

IN THE

Supreme Court of the United States

SAINT MATTHEW'S CHURCHES, INC., *et al.*,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA and VALERIJA KACHAVOS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF

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CORPORATE DISCLOSURE STATEMENT

Pursuant to rule 29.6 of the Rules of the Supreme Court of the United States, Saint Matthew's Churches, Inc., states that there is no parent corporation and there is no publicly held company that owns 10% or more of any corporate stock.

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LEGAL ARGUMENT

Pursuant to rules 15(5) and 15(6) of the Rules of the Supreme Court of the United States, the petitioners, Saint Matthew's Churches, Inc., James Eugene Ewing, Milton Ray McElrath, Milton Ray McElrath, Jr., Deborah McElrath, J.C. Joyce, Elizabeth Ann Rooney Ewing, and Donald R. Luce, respectfully submit this reply to the brief filed by plaintiff and respondent Valerija Kachavos in opposition to their petition for a writ of certiorari. The opposition brief fails to offer any valid reasons why certiorari should be denied. It should be granted because:

I.

The Plaintiff Has Failed to Demonstrate That Any Claim of Hers of Wrongful Secular Conduct Can Be Adjudicated Without Proof of the Truth or Falsity of Religious Doctrines, and Thus Jurisdiction Is Lacking.

Religious freedom is guaranteed by the First Amendment to the Constitution of the United States. As interpreted by this Court in *United States v. Ballard*, 322 U.S. 78, 64 S. Ct. 888, 88 L. Ed. 1148 (1944), such freedom prohibits the exercise of jurisdiction by any secular court over an issue involving the truth or falsity of religious doctrines and beliefs.

In her opposition brief, plaintiff and respondent Valerija Kachavos (hereinafter "plaintiff") cites many general principles of First Amendment jurisprudence. The government, of course, may regulate conduct through laws of neutral general applicability. This principle applies even to religiously motivated conduct, such as engaging in

polygamy, handling snakes in church, or wearing particular clothing. In such cases, of course, it is necessary only to litigate whether the conduct occurred, not whether particular religious doctrines or beliefs are valid.

The plaintiff's case here is based on alleged fraudulent representations concerning matters of religious doctrine and belief. It is claimed that, for example, the defendants fraudulently represented that the people in its church ministry were brought together by God. The truth or falsity of such a representation cannot be determined except by resort to finding particular religious doctrines and beliefs to be true or false.

The plaintiff, in her opposition brief, has failed to identify even a single allegation in her pleadings that does not involve proof with respect to matters of religion. In some cases, conduct can be evaluated without considering beliefs, but this is not such a case. No one on earth can prove that God answers prayers or does not do so.

In their petition for a writ of certiorari, the defendants argued that there is no jurisdiction to resolve this case, under the rule established by this Court in *United States v. Ballard*, 322 U.S. 78, 64 S. Ct. 888, 88 L. Ed. 1148 (1944). There has been no effective response to this contention. Certiorari should be granted, so as to enforce the protection of religious freedom afforded by this decision. When this Court has decided that no secular court may determine the truth or falsity of religious doctrine and beliefs, lower courts are required to follow this ruling.

II.

The Plaintiff Has Failed to Demonstrate a Direct Relationship Between the Alleged Racketeering Activity of the Defendants and the Harm Now Claimed by Her.

Plaintiff Valerija Kachavos appears to argue that the defendants contend that the Racketeer Influenced and Corrupt Organizations Act (RICO), codified as amended, 18 U.S.C. 1961-1968 (2000), is unconstitutional. No such argument is made in the petition for a writ of certiorari. Rather, it is argued that the plaintiff has failed to allege any injury to her business or property caused by the conduct of the defendants that is proscribed by RICO. Such a requirement has been recognized by many decisions of this court, such as the recent case of *Anza v. Ideal Steel Supply Corp.*, __ U.S. __, 126 S. Ct. 1991, 164 L. Ed. 2d 720 (2006).

In her opposition brief, the plaintiff apparently contends that she has suffered actual injury in the form of lost wages and that such loss of income was directly and proximately caused by the defendants' alleged racketeering activity. However, the plaintiff's own complaint negates any such possibility. She does not allege that the claimed predicate acts of mail and wire fraud injured her or that she parted with anything of value as a result of these acts. She does not allege that she was ever a church member, that she received mail from the church, or that she ever mailed a prayer request to the church. She just does not allege any injury directly to her resulting from the alleged racketeering conduct.

The plaintiff relies on *Khurana v. Innovative Healthcare Systems, Inc.*, 130 F.3d 143 (5th Cir. 1987), and its progeny,

but fails to mention that this Court vacated *Khurana*. *See Teel v. Khurana*, 525 U.S. 979, 119 S. Ct. 442, 142 L. Ed. 2d 444 (1988). Clearly, *Khurana* and its progeny do not state the law. The plaintiff here has no standing to pursue a RICO claim. Any possibility of standing is nullified by this Court's decisions, including *Holmes v. Securities Investor Production Corporation*, 503 U.S. 258, 112 S. Ct. 1311, 117 L. Ed. 2d 532 (1992), and *Anza v. Ideal Steel Supply Corporation*, __ U.S. __, 126 S. Ct. 119, 164 L. Ed. 2d 720 (2006).

Certiorari is necessary, in order to avoid a Federal District Court exercising jurisdiction over a RICO claim, where the plaintiff has no standing to pursue such a claim, according to this Court's decisions.

III.

Plaintiff Has Failed to Address the Issue of Circuit Court Discretion Where Lack of Jurisdiction and Irreparable Injury Are Shown.

In addition to challenging jurisdiction to decide issues of religious beliefs and challenging the standing of a plaintiff not injured by alleged racketeering activity to maintain a RICO action, the defendants presented a third issue in their petition for a writ of certiorari. They asked this court to decide whether a United States Circuit Court of Appeals may summarily deny a petition for a writ of mandamus, where a Federal District court lacks jurisdiction and where irreparable injury is threatened. It is claimed that, under these circumstances, there is no discretion to deny a petition for a writ of mandamus.

In her brief in opposition, the plaintiff has not even mentioned the defendants' third issue. Thus, in effect, she has conceded the validity of the defendants' position on this issue.

IV.

The Plaintiff's Improper Arguments Concerning the Status and Practices of Saint Matthew's Churches, Inc., Must Be Rejected.

The plaintiff claims that Saint Matthew's Churches, Inc., is not a church and directs the Court's attention to prior decisions of the Ninth Circuit Court of Appeals and the United States District Court for the District of Columbia. Both of the cases cited relate to a separate and distinct entity known as Church By Mail, Inc. The plaintiff falsely states that "both courts determined that Petitioners' other enterprises [*sic*] were not churches." (Brier In Opposition, page 13). In footnote one in *Church By Mail, Inc. v. Commissioner of Internal Revenue*, 765 F.2d 1387, 1398, 56 A.F.T.R.2d 85-5483, 5485, the Court specifically states, "[W]e need not reach the question whether the Church is a 'church' within the meaning of section 170(b)(1)(A)(1)." Petitioners also direct the Court's attention to Footnote 28 in *Church By Mail, Inc. v. Commissioner of Internal Revenue*, T.C. Memo. 1984-349, 1984 WL 14998 (U.S. Tax Ct.), 48 T.C.M. (CCH) 471, wherein the Court stated as follows:

> Ministries (now Saint Matthew's Churches, the petitioner herein, as a result of corporate name change) received a letter from respondent, dated 31, 1979, granting it exempt status under Section 501(c)(3). As far as the record herein shows,

> Ministries' exempt status has not been revoked. Since that letter antedated petitioner's application for exemption and Ministries is not a party to this proceeding, we express no opinion as to the continued validity of Ministries' exempt status.

The good faith character of Saint Matthew's Churches was established by the judgment of the Federal Court of Claims in *St. Matthew Publishing, Inc. v. The United States*, No. 970569T. That judgment in pertinent part states as follows:

> "It is Ordered and Adjudged this date, pursuant to Rule 58, that:
>
> > (2) beginning June 1, 1981, plaintiff is an organization described in 26 U.S.C. § 501(c)(3) which is exempt from tax under 26 U.S.C. § 501(a), and an organization described in 26 U.S.C. § 170(c)(2), and, to that extent, judgment is entered against defendant and in favor of plaintiff, and plaintiff's complaint for a declaration is granted."

Currently, Saint Matthew's Churches performs regular worship services at its churches located in New York, New York, and Houston, Texas. The good faith character of Saint Matthew's Churches, Inc., as a church is not subject to reasonable dispute. Neither the plaintiff nor any other individual has standing to attack the good faith of Saint Matthew's Churches or any other Church. *In re United States Catholic Conference v. Baker*, 885 F.2d 1020, 1021 (2d Cir. 1989).

If the defendants are to be tried for the truth or falsity of their religious beliefs, then let them be tried for these, but not in a secular court. They believe God answers prayers. They believe God answers the prayers that they pray and they believe that the prayers they pray will be answered. They believe in miracles. They do not believe that they or any mortal has ever performed a miracle of any kind and have never claimed that they have performed a miracle. They believe that God speaks to their hearts and minds and leads them in everything they do. The plaintiff's statements concerning the beliefs and actions of the defendants contained in their opposition are not only outside the record, but also are false.

CONCLUSION

In her opposition brief, plaintiff Valerija Kachavos has failed to respond adequately to the issues and contentions set forth in the defendants' pending petition for a writ of certiorari. She has failed to address the issues as framed by the defendants and petitioners. She has failed to present any valid argument for denial of certiorari.

For the reasons set forth above, the defendants and petitioners respectfully request that this Court grant their petition for a writ of certiorari. Their rights established by the Constitution and laws of the United States, and by the decisions of this Court, are at stake.

Respectfully submitted,

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